

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

STONEY WILLIAM AULT,

Plaintiff,

v.

Civil Action No. 2:10cv36

WEXFORD HEALTH SOURCES, Inc., et al.,

Defendants.

ORDER

It has been brought to the Court's attention that the plaintiff in this case, Stoney Ault, died on April 19, 2010. On July 13, 2010, Magistrate Judge James E. Seibert filed his Report and Recommendation [Doc. 15], wherein the plaintiff's heir, Ms. Ault, was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.¹

As noted in the Report and Recommendation, the plaintiff's death, in and of itself, does not moot this civil action. Upon examination of the report from the Magistrate Judge, it appears that the plaintiff's heir, his widow, has been given an opportunity to pursue this action and has apparently chosen not to. The Court, upon a review for clear error of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action.

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See **Wells v. Shriners Hospital**, 109 F.3d 198, 199-200 (4th Cir. 1997); **Thomas v. Arn**, 474 U.S. 140, 148-153 (1985).

Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation [Doc. 15] be, and the same hereby is, accepted and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

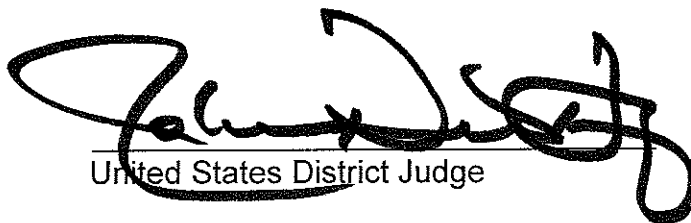
ORDERED that the plaintiff's Complaint [Doc. 1] be, and the same hereby is, **DISMISSED without prejudice** as to Ms. Ault's right to file a separate civil action on behalf of herself and/or the estate of her late husband, and that this matter be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the defendants. It is further

ORDERED that if the plaintiff's heir, Ms. Ault, should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

DATED: August 16, 2010.


United States District Judge